

therefrom and take certain affirmative action in order to effectuate the policies of the Act.

Upon the above findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Essex County and Vicinity District Council of Carpenters, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All Carpenters at the Ivy Hill project of Fairmount Construction Company, including weatherstrippers, floorlayers, and linoleum layers, but excluding supervisors as defined in Section 2 (11) of the Act, constitute a unit of employees appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. On or before May 18, 1948, Essex County and Vicinity District Council of Carpenters, A. F. of L., was the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By demanding from Fairmount Construction Company, and insisting upon, a collective bargaining agreement making membership in its organization or its locals a condition of employment without compliance with the proviso in Section 8 (a) (3) of the Act, and by supporting its demand for such a contractual provision with a threat of strike, a strike, and a refusal to agree to any contract not containing such a provision, Essex County and Vicinity District Council of Carpenters, A. F. of L., (a) attempted to cause Fairmount Construction Company to discriminate against employees in violation of Section 8 (a) (3), thereby engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act, and (b) also refused as the exclusive bargaining representative of the employees in the aforesaid appropriate unit to bargain collectively with Fairmount Construction Company, thereby engaging in unfair labor practices within the meaning of Section 8 (b) (3) of the Act.

5. By restraining and coercing employees of Fairmount Construction Company and of other employers engaged in the delivery of materials to the Ivy Hill project, in the exercise of the rights guaranteed in Section 7 of the Act, Essex County and Vicinity District Council of Carpenters, A. F. of L., has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

6. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume]

WASHINGTON HARDWARE COMPANY *and* PAT DARNTON, PETITIONER *and*
WAREHOUSE AND PRODUCE WORKERS, LOCAL 599. *Case No. 19-RD-35.*
August 6, 1951

Decision and Order

Upon a petition for decertification duly filed, a hearing was held before Patrick H. Walker, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

¹ At the hearing the Union moved that the petition be dismissed on the ground that the unit requested by the Petitioner was inappropriate. For reasons given in paragraph numbered 3, below, the Union's motion is hereby granted.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Reynolds].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner, an employee of the Employer, asserts that the Union is no longer the representative of the employees designated in the petition as defined in Section 9 (a) of the Act.

The Union, a labor organization, is the currently recognized representative of the Employer's employees.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Petitioner seeks decertification of the Union in a unit of warehouse employees, limited to employees of this Employer. The Union contends that this unit is inappropriate because it is only a segment of a multiemployer unit which the Union has represented for some time.

For several years the Union has been representing a unit of the warehousemen of 12 companies, including the Employer, under a series of contracts negotiated for the companies by the Industrial Conference Board. The latest collective bargaining contract was executed by the Union and the Industrial Conference Board for these companies on June 1, 1949, for a term expiring April 1, 1951. This contract provided that it should continue in effect from year to year thereafter in the absence of a notice served by either party upon the other 60 days before its expiration date. On January 26, 1951, the Union notified the Industrial Conference Board of its desire to negotiate changes or revisions in this agreement. Thereafter the Industrial Conference Board, acting for all 12 companies including the Employer, began negotiations with the Union. On May 8, 1951, the Petitioner filed its petition herein. On the same day, as soon as the Employer was notified of the filing of the petition, it wrote the Industrial Conference Board that it did not wish to be represented by the latter in the current negotiations with the Union for a new contract.

At the hearing the Employer's treasurer, who is responsible for the Employer's labor relations, testified that in withdrawing authorization to be represented by the Industrial Conference Board in current negotiations, the Employer was acting upon advice of counsel, and that it did so only to avoid anything "improper or illegal" that might be involved in continuing to bargain with the Union during the

pendency of this petition.² The Employer has not withdrawn from membership in the Industrial Conference Board, nor has it indicated an intent to abandon its practice of bargaining jointly with the other employer members of the Board, otherwise than for these employees during the pendency of this proceeding.³ In these circumstances, we are unable to find that the Employer has unequivocally evinced an intent henceforth to pursue a course of individual action with regard to its labor relations.⁴ Therefore we believe that the bargaining history on a multiemployer basis is controlling in determining the appropriate unit, and we find that a unit comprising only the employees of this Employer is too limited in scope.⁵ As we have found that the unit herein proposed is inappropriate, we shall dismiss the petition.

Order

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

² This action, though it may have been laudably motivated, was apparently based on a misconception of the Employer's responsibilities and privileges under the Act. See *William Penn Broadcasting Company*, 93 NLRB 1104. Cf. *Midwest Piping and Supply Company*, 63 NLRB 1060.

³ A contract was executed by the Industrial Conference Board as of April 1, 1951, covering a separate multiemployer unit of truck drivers. The Employer, whose drivers are included in this unit, has not revoked the Industrial Conference Board's authority to represent it in negotiations for these employees.

⁴ Cf. *Associated Fleet Owners, et al.*, 90 NLRB No. 169; *Carnation Company*, 90 NLRB 1808.

⁵ *Associated Fleet Owners, supra*; *Carnation Company, supra*; *Society of Independent Motion Picture Producers, and its Members*, 94 NLRB 110.

AMERICAN METAL DECORATING COMPANY and UNITED STEELWORKERS OF AMERICA, CIO, PETITIONER. *Case No. 13-RC-1893. August 6, 1951*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Helene Zogg, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.